

STATE OF MICHIGAN  
COURT OF APPEALS

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PAUL W. GREEN and GRACIE E. GREEN,

UNPUBLISHED

Plaintiffs-Appellants,

v

No. 199992

Branch Circuit Court

CONSUMERS POWER COMPANY,

LC No. 96-001119 NZ

Defendant-Appellee.

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Before: Griffin, P.J., and Wahls and Gribbs, JJ.

GRIFFIN, P.J. (dissenting).

I respectfully dissent. Plaintiffs have successfully engaged the majority in a “torturous exercise in semantics” (majority slip op at 5) in a search for ambiguities in an unambiguous legal instrument. The convoluted argument accepted by the majority ignores the intent of the parties as expressed in the paragraph structure of the instrument and its plain and ordinary language.

In *Gortney v Norfolk & W R Co*, 216 Mich App 535, 540-541; 549 NW2d 612 (1996), our Court set forth the following principles for interpreting a release:

The scope of a release is controlled by the intent of the parties as it is expressed in the release. See, e.g., *Taggart [v United States]*, 880 F2d 867 (CA 6, 1989), *supra* at 870; *Virginia Impression Products [Co, Inc v SCM Corp]*, 448 F2d 262, (CA 4, 1971), *supra* at 265; *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994); *Adell v Sommers, Schwartz, Silver & Schwartz, PC*, 170 Mich App 196, 200; 428 NW2d 26 (1988). If the text in the release is unambiguous, we must ascertain the parties’ intentions from the plain, ordinary meaning of the language of the release. *Empro Mfg Co, Inc v Ball-Co Mfg, Inc*, 870 F2d 423, 425 (CA 7, 1989); *Consolidated Gas Supply Corp v Federal Energy Regulatory Comm*, 745 F2d 281, 283-284 (CA 4, 1984); *Tuskegee Alumni Housing Foundation, Inc v Nat’l Homes Construction Corp*, 450 F Supp 714, 716 (SD Ohio, 1978), *aff’d* 624 F2d 1101 (CA 6, 1980); see also *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 640; 540 NW2d 777 (1995); *Michigan Chandelier*

*Co v Morse*, 297 Mich 41; 297 NW 64 (1941); *Skotak, supra* at 619; *In re Loose*, 201 Mich App 361, 366; 505 NW2d 922 (1993). The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. *Int'l Union of Bricklayers & Allied Craftsmen Local Union No 20 v Martin Jaska, Inc*, 752 F2d 1401, 1406 (CA 9, 1985); *Wabash, Inc v Avnet, Inc*, 516 F Supp 995, 998 (ND Ill, 1981); see also *Moore v Kimball*, 291 Mich 455, 460-461; 289 NW 213 (1939). A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. *Stewart v KHD Deutz of America Corp*, 980 F2d 698, 702 (CA 11, 1993); see *Thomas v Jewell*, 300 Mich 556, 560-561; 2 NW2d 501 (1942). If the terms of the release are unambiguous, contradictory inferences become “subjective, and irrelevant,” *Cleveland-Cliffs Iron Co v Chicago & NW Transportation Co*, 581 F Supp 1144, 1149 (WD Mich, 1984), and the legal effect of the language is a question of law to be resolved summarily. *Empro Mfg, supra* at 425; *Mason Drug Co, Inc v Harris*, 597 F2d 886, 887 (CA 5, 1979); *Freeman v Continental Gin Co*, 381 F2d 459, 465 (CA 5, 1967); see also *Skotek, supra* at 619; Restatement Contracts, 2d, § 212, comment d, p 127; Calamari & Perillo, Contracts (3d ed), § 3-10, pp 166-167.

In the present case, for the consideration of \$500,000, the plaintiffs executed a “Release and Save Harmless Agreement” in favor of defendant Consumers Power Company and Kaiser Electric, Inc. The release and hold harmless agreement affords defendant and Kaiser Electric broad protection and serves three purposes. First, the agreement settles the original Branch Circuit Court action, *Green v Consumers Power Co & Kaiser Electric*, No. 87-04-217-NI, although “[i]t is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability.” (Release and Save Harmless Agreement, paragraph two.)

Second, the instrument releases and forever discharges defendant from all claims and “all actions and causes of action which [plaintiffs] now have or might make or maintain or which *might hereafter accrue* . . . in any way arising out of the presence at anytime, *past, present and future* of stray voltage” . . . (Release and Save Harmless Agreement, paragraph one. Emphasis added.)

Third, the release and save harmless agreement holds defendant harmless for future damages which may arise in the event that the farm is “sold, leased or rented” by plaintiffs “to third parties.” (Release and Save Harmless Agreement, paragraphs 4 and 5.)

The majority finds ambiguities in the release and save harmless agreement only when it reads portions of the instrument out of context. However, the separate paragraphs of the release and save harmless agreement serve distinct purposes. If the logical paragraph structure of the instrument is recognized and each sentence analyzed in context, the confusion perceived by the majority does not exist.

In *Gortney, supra*, this Court rejected an analogous argument. In *Gortney*, plaintiff argued that a release of “any claim of any kind whatsoever,” was ambiguous as to whether claims for personal injuries were discharged. We disagreed and held:

[T]he language of the release evidences a clear intent to settle and to release defendant from liability for “any claim[,] . . . demand, action or cause of action, of any kind whatsoever, known or unknown, which [decendent had] or could have [had] on account of, or in any manner arising out of or connected with, [his] employment.” We find no ambiguity in this broad, all-encompassing language. Indeed, the language releasing “any claim . . . of any kind whatsoever” can hardly be interpreted as excluding claims for personal injury. See, e.g., *Taggart [v United States]*, 880 F2d 867 (CA 6, 1989)], *supra*; *Virginia Impression Products [Co, Inc v SCM Corp]*, 448 F2d 262 (CA 4, 1971)], *supra*; *Dombrowski v City of Omer*, 199 Mich App 705, 708; 502 NW2d 707 (1993); *Moore v Campbell, Wyant & Cannon Foundry*, 142 Mich App 363, 368; 369 NW2d 904 (1985). Nor does the release contain any other language that could suggest such an interpretation. Contrary to plaintiff’s contention, the text of the release does not limit its scope to issues pertaining to the terms of employment. Rather, the release expressly states that it applies to “any” claim and that its scope is “not limited to” any specifically enumerated topic. In sum, the release is capable of but one reasonable interpretation: that decendent released all claims, including personal injury claims, in exchange for a substantial monetary consideration. Accordingly, we hold that the trial court correctly ruled that decendent released defendant from all personal injury actions that arose during the course of decendent’s employment with defendant. [*Id.* at 541-542.]

In my view, the instant case is similar to *Gortney*. Like *Gortney*, we should not read ambiguities into a legal instrument which by its structure and language is not ambiguous.

Finally, although not decided by the majority, I agree with defendant that plaintiffs’ attempt to reform the release for reasons of public policy is barred due to plaintiffs’ failure to tender the consideration given for the release. *Stefaniak v Cranbrook Educational Community*, 435 Mich 155; 458 NW2d 56 (1990).

The lower court correctly granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(7) on plaintiffs’ second complaint for damages allegedly arising out of stray voltage. I would affirm.

/s/ Richard Allen Griffin